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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Gabriel G. Marcu	Group Art Unit: 3662
Serial No.: 10/663,574	Examiner: LUKE D. RATCLIFFE
Filed: September 16, 2003	Conf. No.: 5291
For: Positioning A First Surface In A Pre-Determined Position Relative To A Second Surface	Atty. Dkt.: 2095.000900 Client Docket: P3112

APPEAL BRIEF

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Sir:

On May 22, 2007, Appellant filed a Notice of Appeal in response to a Final Office Action dated January 4, 2007, issued in connection with the above-identified application. Additionally, Appellant filed a Pre-Appeal Brief Request for Review. The Office issued a Notice of Panel Decision from Pre-Appeal Brief Review rejecting Appellant's arguments. Therefore, Appellant hereby submits this Appeal Brief to the Board of Patent Appeals and Interferences. The date for filing this Appeal Brief is August 18, 2007. This response is being filed on Monday, August 20, 2007 (August 18, 2007 falls on a Saturday), therefore, it is timely filed.

If an extension of time is required to enable this paper to be timely filed and there is no separate Petition for Extension of Time filed herewith, this paper is to be construed as also

constituting a Petition for Extension of Time Under 37 CFR § 1.136(a) for a period of time sufficient to enable this document to be timely filed.

The Commissioner is authorized to deduct the fee for filing this Appeal Brief ($500.00) from Williams, Morgan & Amerson, P.C., PTO Account No. 50-0786/2095.000900. No other fee is believed to be due in connection with the filing of this document. However, should any fee under 37 C.F.R. §§ 1.16 to 1.21 be deemed necessary for any reason relating to this document, the Commissioner is hereby authorized to deduct said fee from account above.

I. REAL PARTY IN INTEREST

The present application is owned by Apple Inc.

II. RELATED APPEALS AND INTERFERENCES

Appellant is not aware of any related appeals and/or interferences that might affect the outcome of this proceeding.

III. STATUS OF CLAIMS

Claims 1-5, 8, 10-13, 18-23, 26-30 and 35-45 stand rejected and are the subject of this Appeal. Claims 6 and 7 are cancelled. Claims 9, 14-17, 24, 25, and 31-34 are withdrawn from consideration.

IV. STATUS OF AMENDMENTS

After the Final Rejections, no other amendments were made to any other claims.

The Examiner rejected claims 1-5, 8, 26 and 27 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,764,010 (***Bachman***). The Examiner also rejected claims 10-13 and 18 under 35 U.S.C. 103(a) as being unpatentable over ***Bachman*** in view of U.S. Patent No.

5,026,998 (***Holzl***). The Examiner further rejected claim 19 under 35 U.S.C. 103(a) as being unpatentable over ***Bachman*** in view of ***Holzl***, as applied to claim 18, and further in view of U.S. Patent No. 5,872,623 (***Stabile***). The Examiner additionally rejected claims 20, 21, 38-41, 44 and 45 under 35 U.S.C. 103(a) as being unpatentable over ***Bachman*** in view of ***Holzl*** and U.S. Patent No. 4,225,241 (***Dankliker***). The Examiner further rejected claims 28-30 under 35 U.S.C. 103(a) as being unpatentable over ***Bachman*** in view of U.S. Patent No. 4,480,912 (***Snyder***). The Examiner further rejected claim 36 under 35 U.S.C. 103(a) as being unpatentable over ***Bachman*** in view of ***Stabile.*** The Examiner further rejected claim 42 under 35 U.S.C. 103(a) as being unpatentable over ***Bachman*** in view of ***Holzl*** and ***Dankliker*** and ***Snyder***. Finally, the Examiner rejected claim 43 under 35 U.S.C. 103(a) as being unpatentable over ***Bachman*** in view of ***Holzl*** and ***Dankliker*** and ***Stabile***.

V. SUMMARY OF CLAIMED SUBJECT MATTER

In one aspect of the present invention, a method is provided for positioning a first apparatus in relation to a second apparatus. An optical signal from a first apparatus is sent to a second apparatus based upon an incident angle (220). A reflection having a reflected angle (230) of the optical signal from the second apparatus is received. A position of one of the apparatuses relative to the other apparatus is adjusted by adjusting the incident angle (220) based upon the reflection. *See Specification, page 4, lines 3-7; page 7, lines 6-12; page 10, line16-page 11, line 17; page 12, line 8-page 13, line 9; Figures 3 and 5.*

In another aspect of the present invention, a system is provided for positioning a first apparatus in relation to a second apparatus. The system of the present invention includes an optical source (130) affixed to the first apparatus. The optical source (130) is provided for

directing an incident light (140) to the second apparatus. The system of the present invention also includes a light receiving unit (660) to receive reflective light (150) reflected from the second apparatus. The light receiving unit (660) comprising a circuit to detect a position of the reflective light (150). The position of the reflective light (150) is used to adjust the positioning of the first apparatus in relation to the second apparatus. *See Specification, page 4, lines 9-15; page 7, lines 12-18; page 13, line 10-page 15, line 3; Figure 6.*

In yet another aspect of the present invention, an apparatus is provided for positioning a first apparatus in relation to a second apparatus. The apparatus comprises means for sending an optical signal from a first apparatus to a second apparatus based upon an incident angle (220), and means for receiving a reflection having a reflected angle (230) of the optical signal from the second apparatus on a screen. The apparatus also includes means for adjusting a position of one of the apparatuses relative to the other apparatus by adjusting the incident angle (220) based upon the reflection. *See Specification, page 8, line 7-page 10, line 15; Figures 1 and 2.*

In another aspect of the present invention, an apparatus is provided for positioning a first apparatus in relation to a second apparatus. The apparatus comprises an optical source (130) affixed upon the first device. The optical source (130) includes a screen. The optical source (130) is adapted to provide an incident light (140) at an incident angle (220) directed towards the second device from which a reflected light is received upon the screen. The apparatus is adapted to adjust the relative positioning between the first and second devices based upon the position of the reflected light on the screen by adjusting the incident angle (220). *See Specification, page 4, lines 17-23; page 8, line 7-page 10, line 15; Figures 1 and 2.*

In yet another aspect of the present invention, a system is provided for testing a computer display. The system includes a testing unit (350) for performing a test upon the computer

display, and an optical source (130) affixed to the testing unit (350). The optical source (130) is adapted to direct an incident light (140) to the computer display. The system also includes a light receiving unit (660) to receive reflective light (150) reflected from the computer display. The location of the light receiving unit (660) upon which the reflective light (150) is received is used to adjust the positioning of the testing unit (350) in relation to the computer display. *See Specification, page , lines 1-9; page 7, lines 13-18; page 10, line 16-page 11, line 17; Figure 3.*

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1-5, 8, 26 and 27 are unpatentable over U.S. Patent No. 4,764,010 (***Bachman***);

2. Whether claims 10-13 and 18 are unpatentable over ***Bachman*** in view of U.S. Patent No. 5,026,998 (***Holzl***);

3. Whether 19 is unpatentable over ***Bachman*** in view of ***Holzl***, as applied to claim 18, and further in view of U.S. Patent No. 5,872,623 (***Stabile***);

4. Whether claims 20, 21, 38-41, 44 and 45 are unpatentable over ***Bachman*** in view of ***Holzl*** and ***Dankliker***;

5. Whether claims 28-30 are unpatentable over ***Bachman*** in view of U.S. Patent No. 4,480,912 (***Snyder***);

6. Whether claim 36 is unpatentable over ***Bachman*** in view of ***Stabile;***

7. Whether claim 42 is unpatentable over ***Bachman*** in view of ***Holzl*** and ***Dankliker*** and ***Snyder***; and

8. Whether claim 43 is unpatentable over ***Bachman*** in view of ***Holzl*** and ***Dankliker*** and ***Stabile***.

VII. ARGUMENT

The present invention is directed to a method, system and apparatus for positioning a first device in relation to a second device. For example, the first device may be a measuring instrument or a test instrument that is aligned or positioned in relation to a second device, such as the LCD screen of a computer display and/or a television screen. Therefore, the measuring instrument can be aligned more accurately, such that consistent testing of various LCD screens may be performed, thereby increasing the efficiency of testing of computer displays. The Examiner relies heavily upon U.S. Patent No. 4,764,010 (***Bachman***) and U.S. Patent No. 5,026,998 (***Holzl***). ***Bachmann*** is directed to a single testing machine whose brackets with their axes are to be aligned relative to each other. ***Holzl*** is directed to checking the coaxial alignment of tandem arranged shafts. ***Holzl*** discloses measuring the inline or an offset state of the shaft. Other cited prior art references to not make up for the deficit or ***Bachmann*** and ***Holzl***. Accordingly, the Examiner erred in rejecting the claims of the present invention.

The specific claims of the present invention are discussed below.

A. Claims 1-5, 8, 26 and 27 Are Not Unpatentable under 35 U.S.C. 102(b) over U.S. Patent No. 4,764,010 (*Bachman*)

Bachman does not teach or suggest all of the elements of independent claims 1, 26 and 27 of the present invention. An anticipating reference by definition must disclose every limitation of the rejected claim in the same relationship to one another as set forth in the claim. *In re Bond*, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990).

With regard to amended independent claim 1, Appellant describes and claim sending an optical signal from a first apparatus to a second apparatus based upon an incident angle. The method of claim 1 further includes receiving a reflection having a reflected angle of the optical signal from the second apparatus on a screen and adjusting a position of one of the apparatuses relative to the other apparatus by adjusting the incident angle based upon the reflection. For example, Appellant describes that embodiments of the present invention provide for a method and an apparatus for positioning a first device in relation to a second device. For example, the first device may be a measuring instrument or a test instrument that is aligned or positioned in relation to a second device, such as the LCD screen of a computer display and/or a television screen. Therefore, the measuring instrument can be aligned more accurately, such that consistent testing of various LCD screens may be performed, thereby increasing the efficiency of testing of computer displays. *See* Patent Application, page 7, lines 6-12. The Appellant further describes embodiments of the present invention provide for an optical source that is affixed to a test instrument wherein a light source (*e.g.*, a laser) is pointed towards a subject, such as the LCD screen, which may contain a reflective material (*e.g.*, a mirror) affixed upon its surface. The light is then reflected back to a screen that may be affixed to the test instrument or the optical source. Therefore, the orientation of the reflected light upon the screen may be used to more accurately align or position the measuring instrument in relation to the LCD screen. It is respectfully submitted that independent claim 1 is not anticipated or rendered obvious based on ***Bachmann***.

Bachmann describes techniques for aligning axes of different portions of a single apparatus, i.e., it aligns two or more bracket axes relative to each other on a testing or processing machine. In the testing or processing machine described by ***Bachmann***, the axis of a second

bracket is aligned relative to the axis of a first bracket on the same testing or processing machine. In other words, ***Bachmann*** describes a single testing machine whose brackets with their axes are to be aligned relative to each other. *See* ***Bachmann***, col. 2, lines 30-32 and Figure 1. However, aligning of different apparatus portions with their axes relative to each other in ***Bachmann*** is distinct from adjusting a position of one of the apparatuses relative to the other apparatus, as set forth in claim 1.

In the Office Action, the Examiner asserts that ***Bachmann*** teaches all the features of claim 1. ***Bachmann*** does not, however, teach or suggest adjusting a position of one of the apparatuses relative to the other apparatus in which an optical signal is sent from a first apparatus to a second apparatus, as set forth in independent claim 1.

The Examiner argues that the "first apparatus" of claim 1 corresponds to the first bracket of the four brackets 14a-d on a testing or processing machine in ***Bachmann***, and the "second apparatus" corresponds to the second bracket of the four brackets 14a-d on the same testing or processing machine disclosed in ***Bachmann***. *See* Final Office Action, page 2. However, the Examiner is plainly incorrect with respect to the "second bracket" (i.e., second apparatus according to the Examiner). Even a cursory review of ***Bachmann*** reveals that the second bracket ("second apparatus" according to the Examiner) is, in fact, mounted on the same testing or processing machine on which the first bracket (i.e., first apparatus according to the Examiner) is mounted, and it is not a second apparatus, as called for by claim 1. See ***Bachmann,*** col. 2, lines 30-32 (stating a testing machine whose brackets with their axes are to be aligned relative to each other). For this reason alone, claim 1 (and its dependent claims) are allowable.

Bachmann neither sends an optical signal from a first apparatus to a second apparatus based upon an incident angle nor does it receive a reflection having a reflected angle of the optical signal from the second apparatus, as set forth in independent claim 1. In fact, ***Bachmann*** is completely silent about a second apparatus and adjusting a position of any one of the two or more apparatuses. Thus, Appellant respectfully submits that independent claim 1 and its dependent claims are in condition for allowance.

In addition, other pending claims that stand rejected on a combination of ***Bachmann*** with other cited references are also allowable because ***Bachmann*** discloses aligning for a single apparatus with multiple brackets. Since ***Bachmann*** aligns, relative to each other, these brackets with their axes, it actually teaches away from the claimed combination. At a minimum, ***Bachmann*** undermines any motivation to combine its teachings with that of ***other cited references***.

The pending claims are allowable for an additional fundamental reason --- not only ***Bachmann*** fails to teach all the features of claim 1 in the manner suggested by the Examiner, but rather the purported prior art is a non-analogous prior art. In other words, the Examiner uses the non-analogous ***Bachmann*** prior art in an attempt to read upon claims of the present invention. Claims 1, 26 and 27 call for sending an optical signal from a first apparatus to a second apparatus based upon an incident angle and receiving a reflection having reflected angle on the screen and then adjusting. Claims 1, 26 and 27 also call for adjusting a position of one of the apparatus relative to the other by adjusting the incident angle based upon the reflection. The non-analogous subject matter of ***Bachmann*** does not anticipate all of the elements of these claims. The Examiner cites broad, column-long citations of ***Bachmann*** without providing specific

element by element analysis and arguments to reject the claims. However, upon an evaluation of ***Bachmann***, it is clear that ***Bachmann*** does not anticipate all of the elements of claims of the present invention.

Bachmann merely discloses brackets being aligned using a laser. A laser is mounted on the first bracket and directs a beam onto the reflector surface of a disc mounted on the second bracket. The reflected beam produces a dot of light on the perforated disc, which is arranged near the exit aperture of the light source. The second bracket is adjusted, wherein the dot of light is directed onto the aperture and then the two brackets are regarded as being aligned. ***Bachmann*** cites that the beam emitted by the light source coincides exactly with the axis of the first bracket and the axis of the beam is aligned with the first bracket. *See* column 2, lines 4-20 of ***Bachmann***. ***Bachmann*** discloses that a partial deflection of the beam produces a weak image on the perforated disc 25. If the phase 32a is not at exactly a right angle to the incident beam, the column 33 is then adjusted so that the weak dot of light disappears in the apertures. *See* column 5, lines 8-13. ***Bachmann*** discloses that the merging light beam is only adjusted in the vertical plane. *See* column 5, lines 13-16. Therefore, it is apparent from a reading of ***Bachmann*** that ***Bachmann*** uses the disappearance of the weak image of the partially deflected beam to perform alignment. ***Bachmann*** does not disclose adjusting the position between the first and second devices based on the reflected light on the screen by adjusting the incident angle. In fact, ***Bachmann*** clearly does not disclose adjusting the incident angle at all. Therefore, clearly, ***Bachmann*** does not disclose adjusting the position of one of the apparatuses relative to the other by adjusting any type of an incident angle based upon a reflection. ***Bachmann*** does not disclose any type of a measurement or analysis of the incident angle at all. Therefore, for at least the arguments provided above independent claims 1, 26 and 27 of the present invention are not

taught, disclosed or suggested by ***Bachmann***. Therefore, independent claims 1, 26 (and 27 of the present invention are allowable for at least the reasons cited above. Further, dependent claims 2-5 and 8, which depend from allowable claim 1, are also allowable for at least the reasons cited above.

B. <u>Claims 10-13 and 18 Are Not Unpatentable under 35 U.S.C. 103(a) over *Bachman* in view of U.S. Patent No. 5,026,998 (*Holzl*)</u>

The combination of ***Bachman*** and ***Holzl*** does not teach, disclose or make obvious all of the elements of claims 10-13 and 18 of the present invention. To establish a *prima facie* case of obviousness, three basic factors should be considered. First, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Second, there should be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Third, there should be a reasonable expectation of success. The combination of ***Bachman*** and ***Holzl*** do not establish these factors. Claim 10 calls for an optical source fixed to a first apparatus, wherein the optical source is capable of directing an incident light onto a second apparatus. The system also includes a light receiving unit to receive reflected light from the second apparatus, wherein the light receiving unit comprises a circuit to detect the position of the reflected light. The position of the reflected light is used to adjust the position of the first and second apparatuses.

Bachmann clearly does not disclose any type of a circuit to detect the position of the reflected light. The Examiner cites ***Holzl*** to make up for this deficit. However, ***Holzl*** merely discloses checking the coaxial alignment of tandem arranged shafts. ***Holzl*** is directed to measuring the inline or an offset state of the shaft. However, The Examiner cites the reference

item 7 in Figure 1 to argue obviousness of the circuit to detect the position of the reflected light called for by claim 10. However, ***Holzl*** merely discloses proximate the first shaft 1, there is a measuring receiver 7 fixed in relation to the light source 5. *See* column 4, lines 19-22. ***Holzl*** also refers to item No. 7 of Figure 1 as "position detector 7" wherein the position detector 7 produces two signals S_x, S_y which corresponds to the X and Y coordinate of the position A of the incidence of the light beam on the position detector 7. *See* column 4, lines 22-31. However, ***Holzl*** also discloses that S_x, S_y correspond to electrical signals that is indicative of the size and the prefix sign of mutually perpendicular components S_x, S_y of the distance of the respective point of incidence. *See* column 4, lines 51-56. Therefore, it would not be clear to those skilled in the art that the measuring receiver 7 actually generates electrical signals that is indicative of the position of the reflective light. ***Holzl*** does not describe a circuit that actually detects the position of the reflected light. The item 7 in Figure 1 merely illustrates a screen that receives a reflected light at a point of incidence A and wherein the screen has an S_y coordinate. However, there is no disclosure of a circuit. Therefore, combining ***Holzl*** to ***Bachmann*** does not make up for the deficit of ***Bachmann*** and claim 10 of the present invention is not made obvious.

Further, those skilled in the art would not combine the non-analogous art of ***Bachmann*** and ***Holzl*** without improper hindsight, in order to make obvious all of the elements of claims of the present invention. This is a factor that must be considered when determining obviousness. ***Holzl*** is directed to checking the coaxial alignment of tandem-arranged shafts. In contrast, ***Bachmann*** is directed to aligning a first bracket and a second bracket. It is improper hindsight reasoning to combine these non-analogous prior art references to argue obviousness of all of the elements of yet another non-analogous subject matter of claims of the present invention. There is no evidence of motivation within the cited prior art that would lead those skilled in the art to

combine ***Bachmann*** and ***Holzl*** to read upon the element of claim 10 of the present invention. Further, claim 18 calls for the first apparatus to be a testing device, which again, is not disclosed by either ***Bachmann***, ***Holzl*** or their combination. Therefore, the Examiner has failed to establish a *prima facia* case of obviousness of claims10 and 18 of the present invention. Therefore, claims 10 and 18 of the present invention are allowable. Further, independent claims 11, 12 and 13, which depend from claim 10 are also allowable for at least the reasons cited above.

C. <u>Claims 19 Is Not Unpatentable under 35 U.S.C. 103(a) over *Bachman* in view of *Holzl* as applied to claim 18, and further in view of U.S. Patent No. 5,872,623 (*Stabile*)</u>

The combination of ***Bachman***, ***Holzl***, and ***Stabile*** does not teach, disclose or make obvious all of the elements of claim 19 of the present invention. Claim 19 calls for the testing device being either a photometer or a radiometer. The Examiner asserts ***Stabile*** make obvious the photometer and the radiometer of claim 19. The Examiner uses ***Stabile*** to make obvious the photometer and the radiometer by citing Figure 1B, reference 205. Figure 1B, reference 205 refers to a "planer substrate". However, the object that the Examiner suggests is a photometer or a radiometer is actually a screening array. ***Stabile*** does not make obvious the photometer and the radiometer being a testing device, as called for by claim 19 of the present invention.

Additionally, all of the elements of the independent claim from which claim 19 indirectly depends are not disclosed by ***Bachmann*** or ***Hölzl*** as described above. Adding ***Stabile*** to this set of disclosures does not make up for the deficits of ***Bachmann*** and ***Hölzl.*** ***Stabile*** merely refers to measuring the amount of light emitted from a plurality of detection sites but does not call for the reflective light to provide for alignment, as called for by claim 19 of the present invention. Therefore, the combination of ***Bachmann, Stabile and Hölzl*** does not teach, disclose or suggest all of the elements of claim 19 of the present invention.

Additionally, those skilled without using improper hindsight, would not combine the disclosures of ***Bachmann***, ***Hölzl*** and ***Stabile*** since they are directed to substantially different subject matters. ***Bachmann*** is directed to aligning a first bracket and a second bracket, whereas, ***Hölzl*** is directed to checking the coaxial alignment of tandem arranged shafts. ***Stabile*** is directed to measuring the amount of light emitted from a plurality of detection sites. Therefore, without using improper hindsight reasoning, there is no indication of evidence or arguments to support the assertion that those skilled in the art would combine ***Bachmann***, ***Hölzl*** and ***Stabile*** to read upon all of the elements of claim 19 of the present invention. However, as described above, even if ***Bachmann***, ***Hölzl*** and ***Stabile*** were to be combined, all of the elements of claim 19 would not be taught, disclosed or suggested. Therefore, the Examiner failed in providing a *prima facia* establishment of obviousness of claim 19 of the present invention. Accordingly, claim 19 is allowable for at least the reasonscited herein.

D. <u>Claims 20, 21, 38-41, 44 and 45 Are Not Unpatentable under 35 U.S.C. 103(a) over *Bachman* in view of *Holzl* and U.S. Patent No. 4,225,241 (*Dankliker*)</u>

The combination of ***Bachman***, ***Holzl***, and ***Dankliker*** does not teach, disclose or establish a *prima facia* case of obvious as to all of the elements of claims 20, 21, 38-41, 44 and 45 of the present invention. Claims 20 refers to the second apparatus being a computer display device and claim 21 relates to the computer display device being an LCD screen. Further claim 38 refers to the second apparatus being a television display and claims 39 and 44 relate to the computer display device being LCD screens. Further claim 40 relates to testing unit and a computer display. Claim 45 provides for the computer display having a reflective material affixed.

The Examiner adds the disclosure of ***Dankliker***, which refers to an LCD. ***Dankliker*** refers to a collimated light beam being passed through transparent texture marking and adjusting

the relative position of the planer transparent objects. However, neither ***Bachmann*** nor ***Dankliker*** calls for the alignment of an apparatus based upon the reflected light, as called for by claims 20, 21, 38-41, 44 and 45.

Further, ***Dankliker*** and ***Bachmann*** are directed to diverse subject matter and those skilled in the art would not find motivation in the prior art to combine them without using improper hindsight to make obvious all the elements of claims 20, 21, 38-41, 44 and 45. However, even when combined as described above, all of the elements of claims 20, 21, 38-41, 44 and 45 would not be taught, disclosed or make obvious. Therefore, the Examiner failed in providing a *prima facia* establishment of obviousness of claims 20, 21, 38-41, 44 and 45 of the present invention. Accordingly, claims 20, 21, 38-41, 44 and 45 are allowable for at least the reasons cited herein.

E. <u>Claims 28-30 Are Not Unpatentable under 35 U.S.C. 103(a) over *Bachman* in view of U.S. Patent No. 4,480,912 (*Snyder*)</u>

The combination of ***Bachman*** and ***Snyder*** does not teach, disclose or establish a *prima facia* case of obvious as to all of the elements of claims 28-30 of the present invention. The Examiner cites ***Snyder*** to make obvious a screen with a plurality of marks on the screen. Appellant respectfully disagrees that ***Bachmann*** shows means for adjusting a position of an apparatus relative to another apparatus by adjusting the incident angle based upon the reflection as described above. Further, ***Snyder*** does not disclose a plurality of markings on the screen. The Examiner is unable to point to any text-citations or drawings in ***Snyder*** to support this contention. ***Snyder*** merely discloses that a piece of graph paper 110 may be secured in front of the screen. However, the screen of ***Snyder*** does not include any markings, in contrast for by

claim 28 of the present invention. Therefore, the combination of ***Snyder*** and ***Bachmann*** does not disclose all of the elements of claim 28 of the present invention.

Further, claims 29 and 30, which depend from claim 27, are also not taught, disclosed or suggested by ***Bachmann*** for the reasons cited above and ***Snyder*** does not make up for this deficit; nor does the Examiner argue that ***Snyder*** makes up for this deficit. Therefore, the combination of ***Bachmann*** and ***Snyder*** does not teach, disclose or suggest all of the elements of claims 28, 29 and 30 of the present invention. Accordingly, claims 28, 29 and 30 are allowable for at least the reasons cited herein.

F. <u>Claims 36 Is Not Unpatentable under 35 U.S.C. 103(a) over *Bachman* in view of *Stabile*</u>

The combination of ***Bachman*** and ***Stabile*** does not teach, disclose or establish a *prima facia* case of obvious as to all of the elements of claim 36 of the present invention. Claim 36 relates to the first device being either a photometer or a radiometer. As described above, adding ***Stabile*** to read upon the testing device and the testing device being either a photometer or a radiometer, is a misapplication of the prior art. As described above, ***Bachmann*** and ***Spink*** do not teach all of the elements of the underlying independent claim (claim 27) from which claim 36

depend. There is no disclosure in ***Bachmann***, ***Spink***, or their combination that relates to adjusting an apparatus based upon the reflective light and its angle.

In fact, as described above, ***Stabile*** does not disclose a photometer or radiometer; it merely discloses a screening array. Therefore, even when combined, ***Bachmann,*** and ***Stabile*** do not disclose all of the elements of claim 36 of the present invention. Further, as described above, those skilled in the art would not combine ***Bachmann*** and ***Stabile*** to make obvious all of the elements of claim 36 of the present invention. Therefore, the Examiner failed in providing a *prima facia* establishment of obviousness of claim 36 of the present invention. Accordingly, claim 36 is allowable for at least the reasons cited herein.

G. Claims 42 Is Not Unpatentable under 35 U.S.C. 103(a) over *Bachman* in view of *Holzl* and *Dankliker* and *Snyder*

The combination of ***Bachman***, ***Holzl*** and ***Dankliker*** does not teach, disclose or establish a *prima facia* case of obvious as to all of the elements of claim 42 of the present invention. Claim 42 calls for the screen to comprise a plurality of marking to provide a location on the screen upon which the reflective light is received. The Examiner cites ***Snyder*** to make obvious a screen with a plurality of marks on the screen. Appellant respectfully disagrees that ***Bachmann*** shows means for adjusting a position of an apparatus relative to another apparatus by adjusting the incident angle based upon the reflection as described above. Further, ***Snyder*** does not disclose a plurality of markings on the screen. The Examiner is unable to point to any text-citations or drawings in ***Snyder*** to support this contention. ***Snyder*** merely discloses that a piece of graph paper 110 may be secured in front of the screen. However, the screen of ***Snyder*** does not include any markings, in contrast for by claim 42 of the present invention. Therefore, the

combination of ***Snyder*** and ***Bachmann*** does not disclose all of the elements of claim 28 of the present invention.

Further, it is not clear why the Examiner added the disclosure of ***Holzl*** and ***Dändliker*** to this argument since the Examiner did not argue the disclosure of ***Holzl*** and ***Dändliker*** to reject claim 42 of the present invention. ***Holzl*** and ***Dändliker*** also do not disclose a plurality of marking to provide a location on the screen upon which the reflective light is received. Appellant asserts that those skilled in the art would not combine these prior art disclosures to make obvious all of the elements of claim 42 of the present invention. Therefore, the Examiner failed in providing a *prima facia* establishment of obviousness of claim 42 of the present invention. Accordingly, claim 42 is allowable for at least the reasons cited herein.

H. Claims 43 Is Not Unpatentable under 35 U.S.C. 103(a) *Bachman* in view of *Holzl* and *Dankliker* and *Stabile*

The combination of ***Bachman***, ***Dankliker*** and ***Stabile*** does not teach, disclose or establish a *prima facia* case of obvious as to all of the elements of claim 43 of the present invention. Claim 43 calls for the testing unit being a photometer and/or a radiometer. The Examiner cited ***Bachmann***, ***Holzl***, ***Dändliker*** and ***Stabile*** and then discusses ***Walker*** in the argument. Examiner uses ***Stabile*** to make obvious the photometer and the radiometer by citing Figure 1B, reference 205. Figure 1B, reference 205 refers to a "planer substrate". However, the object that the Examiner suggests is a photometer or a radiometer is actually a screening array. ***Stabile*** does not make obvious the photometer and the radiometer being a testing device, as called for by claim 43 of the present invention.

Additionally, all of the elements of the independent claim from which claim 43 indirectly depends are not disclosed by ***Bachmann*** or ***Hölzl*** as described above. Adding ***Stabile*** to this set

of disclosures does not make up for the deficits of ***Bachmann*** and ***Hölzl.*** ***Stabile*** merely refers to measuring the amount of light emitted from a plurality of detection sites but does not call for the reflective light to provide for alignment, as called for by claim 43 of the present invention. Therefore, the combination of ***Bachmann, Stabile and Hölzl*** does not teach, disclose or suggest all of the elements of claim 43 of the present invention.

Further, as described above, those skilled in the art would not be motivated to combine ***Bachmann, Hölzl, Dankliker*** and ***Stabile***, which all contain diverse subject matter. Therefore, it would be improper hindsight reasoning to combine them to make obvious all of the elements of claim 43. However, even if these prior art disclosures were combined, as described above, all of the elements of claim 43 would not be taught, disclosed or suggested. Therefore, the Examiner failed in providing a *prima facia* establishment of obviousness of claim 43 of the present invention. Accordingly, claim 43 is allowable for at least the reasons cited herein.

In light of the arguments presented above, Appellant respectfully asserts that claims 1-5, 8, 10-13, 18-21, 22, 23, 26, 27-30 and 35-45 are allowable. In light of the arguments presented above, a Notice of Allowance is respectfully solicited.

VIII. CLAIMS APPENDIX

The claims currently under consideration, *i.e.,* claims 1-5, 8, 10-13, 18-23, 26-30 and 35-45, are listed in the Claims Appendix attached hereto.

IX. EVIDENCE APPENDIX

There is no evidence relied upon in this Appeal with respect to this section.

X. RELATED PROCEEDINGS APPENDIX

There are no related appeals and/or interferences that might affect the outcome of this proceeding.

In view of the foregoing, it is respectfully submitted that the Examiner erred in not allowing all claims (claims 1-5, 8, 10-13, 18-23, 26-30 and 35-45) pending in the present application over the prior art of record. The undersigned attorney may be contacted at (713) 934-4069 with respect to any questions, comments, or suggestions relating to this appeal.

Respectfully submitted,
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CLAIMS APPENDIX

1. (Previously Presented) A method, comprising:

sending an optical signal from a first apparatus to a second apparatus based upon an incident angle;

receiving a reflection having a reflected angle of said optical signal from said second apparatus on a screen; and

adjusting a position of one of said apparatuses relative to the other apparatus by adjusting said incident angle based upon said reflection.

2. (Original) The method of claim 1, wherein sending said optical signal from said first apparatus to said second apparatus further comprises sending said optical signal from an optical source affixed upon said first apparatus.

3. (Original) The method of claim 2, wherein sending said optical signal from said first apparatus to said second apparatus further comprises directing an incident light from said optical source based upon a predetermined incident angle.

4. (Original) The method of claim 3, wherein an optical signal from said first apparatus to said second apparatus further comprises directing an incident light from said optical source to a reflective material affixed upon said alignment object.

5. (Original) The method of claim 4, wherein adjusting said position of one of said apparatuses relative to the other apparatus based upon said reflection further comprises adjusting said incident angle.

6. (Canceled).

7. (Canceled).

8. (Original) The method of claim 1, wherein adjusting said position of one of said apparatuses relative to the other apparatus based upon said reflection further comprises adjusting the incident angle to change a location on the screen upon which said reflective light is received.

9. (Withdrawn) The method of claim 8, wherein adjusting said position of one of said apparatuses relative to the other apparatus based upon said reflection further comprises using a feedback control system to adjust the incident angle.

10. (Previously Presented) A system for positioning a first apparatus in relation to a second apparatus, comprising:

an optical source affixed to said first apparatus, said optical source for directing an incident light to said second apparatus; and

a light receiving unit to receive reflective light reflected from said second apparatus, said light receiving unit comprising a circuit to detect a position of said reflective light, said position of said reflective light being used to adjust the positioning of said first apparatus in relation to the second apparatus.

11. (Original) The system of claim 10, wherein said light receiving unit comprises a screen to receive said reflective light.

12. (Original) The system of claim 11, wherein said screen comprises a plurality of markings to provide a location on said screen upon which the reflective light is received.

13. (Original) The system of claim 12, wherein said light receiving unit comprises means for providing a signal that is indicative of said location on said screen upon which the reflective light is received.

14. (Withdrawn) The system of claim 12, further comprising:

a feedback control unit to receive data from said optical source and said light receiving unit; said feedback control unit to generate an alignment control signal; and

an alignment unit operatively coupled to said feedback control unit, said alignment unit to affect the alignment of at least one of said first and second apparatuses based upon said alignment control signal.

15. (Withdrawn) The system of claim 14, wherein said feedback control unit comprises a controller to determining an incident angle of said incident light and generate said alignment control signal based upon said incident angle.

16. (Withdrawn) The system of claim 14, wherein said alignment unit comprises a control system to adjust an alignment of at least one of said first and second apparatuses based upon said alignment control signal.

17. (Withdrawn) The system of claim 16, wherein said control system comprises a servo motor to affect the positioning of at least one of said first and second apparatuses.

18. (Original) The system of claim 10, wherein said first apparatus is a testing device.

19. (Original) The system of claim 18, wherein said testing device is at least one of a photometer and a radiometer.

20. (Original) The system of claim 10, wherein said second apparatus is a computer display device.

21. (Original) The system of claim 20, wherein said computer display device comprises a liquid crystal display (LCD) screen.

22. (Original) The system of claim 10, further comprising a reflective material affixed upon said second apparatus for providing said reflective light.

23. (Original) The system of claim 22, wherein said reflective material comprises a mirror.

24. (Withdrawn) The system of claim 10, wherein said second apparatus comprises at least one sensor for sensing said incident light.

25. (Withdrawn) The system of claim 23, further comprising a sensor controller operatively coupled to said sensor, said sensor controller to detect a signal from said at least one sensor indicating that an incident light was detected.

26. (Previously Presented) An apparatus, comprising:

means for sending an optical signal from a first apparatus to a second apparatus based upon an incident angle;

means for receiving a reflection having a reflected angle of said optical signal from said second apparatus on a screen; and

means for adjusting a position of one of said apparatuses relative to the other apparatus by adjusting said incident angle based upon said reflection.

27. (Previously Presented) An apparatus for positioning a first device in relation to a second device, comprising an optical source affixed upon said first device, said optical source comprising a screen, said optical source to provide an incident light at an incident angle directed towards said second device from which a reflected light is received upon said screen; said apparatus being adapted to adjust the relative positioning between said first and second devices based upon the position of said reflected light on the screen by adjusting said incident angle.

28. (Original) The apparatus of claim 27, wherein said screen comprises a plurality of markings to provide a location on said screen upon which said reflective light is received.

29. (Original) The apparatus of claim 28, wherein said apparatus further comprises means for providing a signal that is indicative of said location on said screen upon which the reflective light is received.

30. (Original) The apparatus of claim 27, wherein said reflective light is provided by a reflective material affixed upon said second device.

31. (Withdrawn) The apparatus of claim 30, further comprising:

a feedback control unit to receive data from said optical source, said feedback control unit to generate an alignment control signal; and

an alignment unit operatively coupled to said feedback control unit, said alignment unit to affect the alignment of at least one of said first and second devices based upon said alignment control signal.

32. (Withdrawn) The apparatus of claim 31, wherein said feedback control unit comprises a controller to determining an incident angle of said incident light and generate said alignment control signal based upon said incident angle.

33. (Withdrawn) The apparatus of claim 31, wherein said alignment unit comprises a control system to adjust an alignment of at least one of said first and second apparatuses based upon alignment control signal.

34. (Withdrawn) The apparatus of claim 33 wherein said control system comprises a servo motor to affect the positioning of at least one of said first and second apparatuses.

35. (Original) The apparatus of claim 27, wherein said first device is testing device.

36. (Original) The apparatus of claim 35, wherein said first device is at least one of a photometer and a radiometer.

37. (Original) The apparatus of claim 27, wherein said second device is a computer display device.

38. (Original) The apparatus of claim 27, wherein said second device is a television display device.

39. (Original) The apparatus of claim 37, wherein said computer display device comprises a liquid crystal display (LCD) screen.

40. (Original) A system for testing a computer display, comprising:

a testing unit for performing a test upon said computer display;

an optical source affixed to said testing unit, said optical source for directing an incident light to said computer display; and

a light receiving unit to receive reflective light reflected from said computer display, the location of said light receiving unit upon which said reflective light is received being used to adjust the positioning of said testing unit in relation to the computer display.

41. (Original) The system of claim 40, wherein said light receiving unit comprises a screen to receive said reflective light.

42. (Original) The system of claim 41, wherein said screen comprises a plurality of markings to provide a location on said screen upon which the reflective light is received.

43. (Original) The system of claim 40, wherein said testing unit is at least one of a photometer and a radiometer.

44. (Original) The system of claim 40, wherein said computer display device comprises a liquid crystal display (LCD) screen.

45. (Original) The system of claim 40, further comprises a reflective material affixed upon said computer display for providing said reflective light.